IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4284 OF 2004

Sunil Vinod Rathod ..Petitioner

versus

The State of Maharashtra ..Respondents

Mr. S. Bhatia for the Petitioner.

Mr. K. V. Saste, A.P.P. for the Respondents.

CORAM : A.M. KHANWILKAR,J.

DATE : 20TH OCTOBER 2004.

P.C. :

1. Heard learned counsel for the parties. Perused the record including explanation offered by the Metropolitan Magistrate of the 21st Court, Bandra, Mumbai, dated 19.10.2004.

2 This is fourth application for bail. The first application was rejected after considering the merits on 6.8.2002. The second application came to be rejected by this court on 4.2.2003 and the third application was rejected on 9.6.2003. While rejecting the third application the court has clearly observed that there is no change in the circumstances warranting entertaining successive bail application.

3. To get over this position, the learned counsel for the applicant contends that the changed circumstance after the order dated 9.6.2003 is that trial in respect of accused No.1 has been separated. To my mind, that cannot be considered as changed circumstance for the purpose of entertaining bail application as in this case fourth application. It is seen that on the earlier three occasions when the bail application came to be rejected, this court has repeatedly directed the trial court to expedite the trial. As the trial has still remained pending, this court in its order dated 12.10.2004 called upon the trial court to indicate reasons why the trial has not progressed. In response thereto the detailed explanation has been offered by the concerned Magistrate in his report dated 19.10.2004. On going through the said report, it is obvious that the trial has remained pending for reasons beyond the control of the concerned Magistrate. The report also indicates that now the additional charge under Section 489 of IPC is proposed to be framed against the applicant and in which case the matter will have to be committed to the Sessions Court. The applicant has not filed any reply before the trial court opposing framing of additional charge, as proposed. In that case the trial court cannot be blamed for non disposal of the case inspite of earlier orders passed by this court.

4. Counsel for the applicant placed reliance on a decision of this court reported in **2002 (3) LJSOFT 9 = 2002 Cr.L.J. 1164.** The observations made in the said judgment will be of no avail to the applicant as the present application is for grant of bail and for reasons already recorded, no indulgence can be shown.

5. Accordingly, there is no substance in this application. The same is dismissed.

A.M. KHANWILKAR, J.